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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

BRIGID POLING, et al., individually and
on behalf of all others similarly situated and
on behalf of the general public,

Plaintiffs,

VS.

ARTECH L.L.C.,

Defendant.

Case No.: 3:20-cv-07630-LB

**NOTICE OF JOINT MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

Date: February 10, 2022

Time: 9:30 a.m.

Location: Courtroom B

450 Golden Gate Avenue, 15th Floor
San Francisco, California 94102

Judge: Hon. Laurel Beeler

**NOTICE OF JOINT MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT: MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

SETTLEMENT; [Case No.](#)

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**NOTICE OF JOINT MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

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1 **NOTIC OF JOINT MOTION AND MOTION TO APPROVE**

2 **CLASS ACTION SETTLEMENT**

3

4 **TO ALL PARTIES, THEIR ATTORNEYS OF RECORD, AND ALL OTHER**

5 **INTERESTED PERSONS: PLEASE TAKE NOTICE THAT** on February 10, 2022 at 9:30

6 a.m. in Courtroom B, 15th Floor, of the United States District Court for the Northern District of

7 California, San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, or at

8 such other time or place as may be set by the Court, the Honorable Magistrate Judge Laurel Beeler

9 presiding, provisionally appointed class representatives and Plaintiffs Brigid Poling and Dwight

10 Jenkins and Defendant Artech, LLC (collectively the “Parties) will and hereby do jointly move

11 for entry of an Order finally approving the class-action Settlement Agreement and Release

12 (“Settlement Agreement”) filed herewith and previously in the above-captioned action at ECF

13 No. 36-1 and ECF No. 45. Good cause exists for granting final approval of the Settlement

14 Agreement in that it is fair, reasonable, and adequate. The motion is presented jointly and will be

15 based on this Notice, the Memorandum of Points & Authorities below, the declarations and filings

16 cited therein and/or filed herewith, the records on file in this action, and any additional arguments

17 or evidence the Court may allow or request at or before hearing.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2

3 **I. INTRODUCTION**

4 With this motion, provisionally appointed class representatives Brigid Poling and Dwight
 5 Jenkins (“Plaintiffs”) and Defendant Artech, LLC (“Defendant” or “Artech”) (collectively the
 6 “Parties”) seek final approval of a settlement resolving the conditionally-certified class action
 7 against Artech. The underlying lawsuit involves a putative class of 30,711 current, former, and
 8 potential employees whose personally identifiable information (“PII” or “Personal Information”)
 9 may have been accessible when unknown third-party criminal actors gained unauthorized access
 10 to Artech computer systems between January 5, 2020 and January 8, 2020 (the “Cyber Security
 11 Event”). Expert forensic analysis conducted after the Cyber Security Event did not reveal
 12 evidence that PII of any class member was accessed or removed from Artech’s systems by the
 13 threat actors. Information from the forensic analysis was exchanged and assessed by the Parties
 14 and their experts prior to mediation.

15 The Parties had a lengthy mediation with the Honorable Judge Edward A. Infante, a
 16 respected mediator and retired judge, and ultimately accepted his mediator’s proposal and came
 17 to an agreement on the majority of the settlement terms on June 28, 2021 (and agreed on the
 18 remaining settlement terms shortly after). The settlement agreement that resulted (“Settlement
 19 Agreement” or “Settlement”¹) was preliminarily approved by the Court on September 30, 2021.
 20 (ECF No. 43). The Preliminary Approval Order appointed KCC Class Action Services, LLC
 21 (“KCC” or “Settlement Administrator”) as the third-party administrator and provisionally
 22 appointed Plaintiffs as class representatives and Federman and Sherwood as Class Counsel.

23 // /

24

25 ¹ All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Settlement
 26 Agreement and Release, attached as Exhibit 1 to Plaintiffs’ Motion for Preliminary Approval of Settlement (see
 ECF No. 36-1).

1 Since being appointed, KCC has successfully sent notices to approximately 99.4% of
 2 Settlement Class Members and provided government officials notice as required under the Class
 3 Action Fairness Act. *See* Declaration of Alex Thomas (“Thomas Dec.”), attached hereto as
 4 Exhibit A, at ¶¶2, 3 and Exhibit C thereto (total notices sent versus 166 returned as undeliverable).
 5 To date, 636 claims (2.07% of the total class) have been made by Settlement Class Members, no
 6 Settlement Class Member has opted out, and only one objection to the settlement has been filed.²
 7 *Id.*

8 As outlined below, the proposed Settlement Agreement remains fair, reasonable, and
 9 adequate as explained in Plaintiffs’ Motion for Preliminary Approval (ECF No. 36), which is
 10 incorporated herein by reference, and the Court’s resulting order. There have been no substantive
 11 changes in circumstance since the Preliminary Approval Order was entered, and its terms have
 12 been met. The Parties therefore respectfully request the Court give final approval to the
 13 Settlement Agreement.

14 **II. FACTUAL AND PROCEDURAL BACKGROUND**

15 **A. The Parties**

16 Defendant Artech is a workforce solutions company providing managed services,
 17 contingent labor, staff augmentation, IT consulting, project outsourcing, and statement of work
 18 services across multiple industries, including systems integration, banking and finance,
 19 telecommunications, pharmaceutical and life sciences, energy, healthcare, technology,
 20 transportation, and local and federal government agencies. See First Amended Class Action
 21 Complaint, ECF No. 31 at ¶1. Plaintiffs and others similarly situated represent a putative class of
 22 30,711 individuals whose Personal Information may have been accessible when unknown third-
 23 party criminal actors gained unauthorized access to an Artech’s computer systems as outlined
 24 below.

25
 26 ² Class Counsel contacted the objector and left a voicemail on December 30, 2021, but has not received a call back.
 27
 28

1 **B. Factual Background**

2 As outlined in the approved Notice of Artech, LLC Cyber Security Event Class Action
 3 Settlement (ECF No. 36-3), which has now been provided to Class Members by KCC, beginning
 4 on January 5, 2020 and lasting until January 8, 2020 unauthorized third parties gained access to
 5 certain Artech information systems with the apparent intent of conducting a ransomware attack
 6 (the “Cyber Security Event”). Within six hours after the Cyber Security Event was detected by
 7 Artech IT personnel on January 8, 2020, all Artech information systems were shut down, and
 8 critical systems were rebuilt from uncorrupted backup data, which terminated the unauthorized
 9 third-parties’ ability to access Artech’s systems. Along with a large volume of other data, the
 10 systems affected by the Cyber Security Event contained a number of files with Personal
 11 Information associated with approximately 30,000 current and former Artech employees.
 12 Subsequent third-party forensic analysis did not reveal evidence that the files containing Personal
 13 Information were opened, accessed, or downloaded from Artech’s systems, and Artech has not
 14 been made aware of any such evidence to date; however, the files containing Personal Information
 15 were accessible to the unauthorized third parties during the Cyber Security Event. On or about
 16 September 4, 2020, Artech began notifying individuals, including Plaintiffs and other Class
 17 Members of the Cyber Security Event. See FAC, ECF No. 31 at ¶2.

18 **C. Procedural Background**

19 **1. Pleadings**

20 The original class action complaint was filed on October 29, 2020 asserting claims for (1)
 21 negligence; (2) invasion of privacy; (3) unjust enrichment; (4) breach of fiduciary duty; (5) breach
 22 of confidence; (6) breach of implied contract; (7) breach of the implied covenant of good faith
 23 and fair dealing; (8) violations of California’s Unfair Competition Law, Cal. Bus. & Prof. Code
 24 §§ 17200–17210; (9) violations of the California Customer Records Act, Cal. Civ. Code §§
 25 1798.80–1798.84; (10) violations of California’s Consumer Privacy Act, Cal. Civ. Code §§
 26 1798.100–1798.199.100; and (11) a request for injunctive and declaratory relief to secure their

1 data and fix Artech's data security vulnerabilities (ECF No. 1). On July 16, 2021, Plaintiffs filed
 2 their First Amended Class Action Complaint adding Dwight Jenkins as a named plaintiff (ECF
 3 No. 31). In lieu of Artech answering or filing motions in response to Plaintiffs' claims, the Parties
 4 agreed to participate in informal discovery and mediation.

5 **2. Informal Discovery**

6 The Parties engaged in extensive informal discovery leading up to mediation and
 7 Settlement. The Parties had ongoing written and oral communications to address the information
 8 and exchanged documents critical for a meaningful mediation, which Artech provided.
 9 Declaration of William B. Federman in Support of Plaintiffs' Notice of Motion and Motion for
 10 Preliminary Approval of Proposed Settlement and Memorandum of Points and Authorities in
 11 Support Thereof ("Federman Dec."), ECF No. 36-2 at ¶6. Plaintiffs engaged cyber security
 12 experts who were involved in drafting and submitting to Artech informal requests for information
 13 and production of documents. *Id.* ¶7. The individual Plaintiffs worked diligently with their
 14 counsel to provide documents and information necessary to aid the Class in furtherance of
 15 settlement negotiations. *Id.* ¶8.

16 The Parties held a global meeting before the mediation, which included both Parties'
 17 experts, to engage in a discussion regarding the Cyber Security Event and to assess and opine on
 18 the impact of the Cyber Security Event on both the Class Members and Artech. This meeting
 19 proved useful in informing Class Counsel on settlement discussions. *Id.* ¶6.

20 **3. Mediation and Settlement**

21 In anticipation of the scheduled mediation date of June 28, 2021, Plaintiffs sent a detailed
 22 demand letter to Artech, setting forth a proposed settlement structure to guide negotiations. *Id.*
 23 ¶11. On June 28, 2021, after a full day of mediation with Judge Edward A. Infante (Ret.) and
 24 arm's length negotiations, the Parties agreed to most of the settlement terms. *Id.* ¶12. Arm's-
 25 length negotiations continued over the following days to address the remaining issues until an
 26 agreement was reached on all issues that comprise the Settlement Agreement. *Id.*

1 **4. Preliminary Approval of Settlement**

2 On August 5, 2021 Plaintiffs filed their Notice of Motion and Motion for Preliminary
3 Approval of Proposed Settlement and supporting papers (ECF No. 36). The Court issued an order
4 granting that motion on September 30, 2021 (ECF No. 43). Upon stipulation of the Parties the
5 Court amended the deadlines related to the Procedures for Final Approval Hearing on October
6 29, 2021 (ECF No. 47), and December 15, 2021 (ECF No. 51) with the hearing on this motion
7 and final approval ultimately set for February 10, 2022.

8 **III. TERMS OF THE SETTLEMENT**

9 Though it has been filed previously (ECF No. 36-1, ECF No. 45), for the convenience of
10 the Court, the Parties, Class Members, and other interested persons, the Settlement Agreement is
11 attached hereto as Exhibit B.

12 **A. Definition of the Settlement Class**

13 Should the instant motion be granted, the Parties seek certification of the putative
14 Settlement Class for settlement purposes only pursuant to Fed. R. Civ. Proc. 23(b)(3), with a right
15 of opt-out pursuant to the Court's orders granting preliminary approval and adjusting procedures
16 for final approval (ECF No. 43; ECF No. 47; and ECF No. 51).

17 The Settlement Class is defined as

18 all persons in the United States and Overseas Military identified on the
19 Settlement Class List, including all individuals who were sent
20 notification by Artech that their Personal Information may have been
21 accessible during the Cyber Security Event. Excluded from the
22 Settlement Class are (i) Defendant's trustees, administrators, and
23 attorneys; (ii) all Settlement Class Members who timely and validly
24 request exclusion from and opt-out of the Settlement Class; (iii) the
25 Magistrate Judge to whom the action is assigned and any member of the
Magistrate Judge's staff or immediate family members; (iv) any
members or employees of defense counsel; and (v) any other person
found by a court of competent jurisdiction to be guilty under criminal
law of initiating, causing, aiding or abetting the criminal activity or
occurrence of the Cyber Security Event or who pleads nolo contendere
to any such charge.

1 Settlement Agreement at ¶31. The final Settlement Class List, and therefore the Settlement Class,
2 is comprised of 30,711 individuals.³ See KCC Weekly Claims Report, January 5, 2022, attached
3 as Exhibit C to Thomas Dec.

4 The Settlement Agreement includes all persons whose Personal Information was
5 accessible to third parties during the Cyber Security Event regardless of the state in which they
6 reside, or if they are serving in the military overseas. Thus, the notice plan provides notice and
7 access to benefits for the greatest possible number of individuals that may have been affected by
8 the Cyber Security Event.

9 **B. Settlement Benefits**

10 There is no aggregate cap on the amounts paid to Settlement Class Members submitting
11 valid claims. Unless they also submit a valid Request for Exclusion prior to the Claim Deadline,
12 all Settlement Class Members that submit timely valid Claim Forms are “Participating Settlement
13 Class Members.” In addition to credit monitoring and identity protection services, Participating
14 Class Members may submit claims for compensation of lost time up to \$80 and/or reimbursement
15 of out-of-pocket expenses or losses up to a maximum of \$10,000.00 as follows:

16 **1. Credit Monitoring and Identity Protection Services**

17 All Participating Settlement Class Members shall have until three (3) months following
18 the Final Approval Hearing to request access or extension of their access to credit monitoring and
19 identity protection services through Kroll paid for by Defendant for a period of three (3) years
20 after their actual enrollment or the Claims Deadline, whichever is later. Settlement Agreement at
21 ¶38.

22 **2. Tier One Compensation (Lost Time up to \$80)**

23 Tier One Compensation is available to Participating Class Members who, as of the time
24 they submit their claim form, do not submit evidence to the Settlement Administrator that they
25

26 ³ Due to the inclusion of duplicate entries which were eliminated during settlement administration, Plaintiffs’ Motion
for Preliminary Approval indicated the Settlement Class to be comprised of 30,720 individuals.

1 experienced identity theft, fraud, or misuse of their information “fairly traceable” to the Cyber
 2 Security Event, but do provide documentation or attestation establishing more-likely-than-not (as
 3 determined by the Settlement Administrator) that they spent time addressing the Cyber Security
 4 Event. Tier One Compensation allows Participating Class Members to receive compensation for
 5 up to three hours of lost time at a rate of \$26.67 per hour. Compensable time under Tier One
 6 Compensation cannot exceed \$80 and does not include time spent submitting claim forms. *Id.* at
 7 ¶39.

8 **3. Tier Two Compensation (Reimbursement of Out-of-pocket Losses)**

9 Tier Two Compensation is available (in addition to Tier One Compensation) to
 10 Participating Class Members who submit sufficient evidence as determined by the Settlement
 11 Administrator that they have suffered Out-of-pocket Losses as a result of identity theft or other
 12 fraud or misuse of their PII fairly traceable to the Cyber Security Event. Submitted evidence
 13 supporting a Claim for Tier Two Compensation must establish to the satisfaction of the Settlement
 14 Administrator that:

- 15 a. The loss is an actual, documented, and unreimbursed monetary loss as shown
 by (i) third party documentation supporting the loss; and (ii) a brief description
 of the documentation describing the nature of the loss, if the nature of the loss
 is not apparent from the documentation alone. Third-party documentation can
 include receipts or other documentation not “self-prepared” by the Participating
 Settlement Class Member that documents the costs incurred. Self-prepared
 documents such as handwritten receipts are, by themselves, insufficient to
 receive reimbursement, but can be considered to add clarity or support other
 submitted documentation.
- 21 b. The loss was more-likely-than-not caused by identity theft or other fraud or
 misuse of their Personal Information fairly traceable to the Cyber Security
 Event.
- 23 c. The loss occurred after January 5, 2020.
- 25 d. The Settlement Class Member made reasonable efforts to avoid or seek
 reimbursement for the loss, including but not limited to exhaustion of all
 available credit monitoring insurance and identity theft insurance.

1 *Id.* at ¶40.

2 Under the Settlement Agreement, “Out-of-pocket Losses” are “documented out-of-pocket
3 costs or expenditures that a Participating Settlement Class Member actually incurred between
4 January 5, 2020 and the Notice Deadline that are fairly traceable to the Cyber Security Event, and
5 that have not already been reimbursed by a third party.” *Id.* at ¶22. A wide range of costs and
6 expenditures qualify as Out-of-pocket Losses, including, without limitation,

7 costs associated with credit monitoring or identity theft insurance purchased
8 directly by the claimant, provided that the product was purchased primarily as a
9 result of the Cyber Security Event; costs associated with requesting a credit report,
10 provided that the claimant requested the report primarily as a result of the Cyber
11 Security Event; costs associated with a credit freeze, provided that the claimant
12 requested the freeze primarily as a result of the Cyber Security Event; costs
13 associated with cancelling a payment card and/or obtaining a replacement payment
14 card, provided that the claimant’s request for the cancellation and/or replacement
15 was primarily the result of the Cyber Security Event; costs associated with closing
16 a bank account and/or opening a new bank account, provided that the claimant’s
17 request to close and/or open a bank account was primarily the result of the Cyber
18 Security Event; postage, long-distance phone charges, express mail and other
19 incidental expenses, provided that the claimant provides documentation of the
20 charges and that they were fairly traceable to the Cyber Security Event; overdraft
21 and/or overdraft protection fees, provided that the fees were incurred as a result of
22 the Cyber Security Event; late and/or missed payment fees and/or charges, provided
23 that the fees and/or charges were incurred as a result of the Cyber Security Event;
24 the increase in interest on credit cards or other loans caused by a late or missed
25 payment that was a result of the Cyber Security Event; and damage to credit and
26 costs associated with a decreased credit score if fairly traceable to the Cyber
Security Event.

27 *Id.*

28 Thus, under the Settlement Agreement, every Participating Class Member is entitled to
receive three (3) years of credit monitoring and identity theft protection services. Where a
Participating Class Member has not experienced identity theft, fraud or other misuse of their PII,
they still may claim up to \$80 in compensation for lost time fairly traceable to the Cyber Security
Event. Finally, where submitted evidence establishes that a Participating Settlement Class
Member did suffer identity theft, fraud, or other misuse of their Personal Information fairly

traceable to the Cyber Security Event, the Settlement Agreement offers an efficient mechanism to receive reimbursement of up to \$10,000 for any resulting out-of-pocket expenditures. Importantly, there is no aggregate cap or concomitant possibility of reversion. Procedural Guidance for Class Action Settlements, United States District Court for the Northern District of California (“Guidance”), available at <https://cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/> (last accessed Jan. 6, 2022), Item (1)(h).

4. Injunctive Relief

Shortly after the Cyber Security Event, Artech engaged a third-party cybersecurity consultant to investigate the event and provide recommendations about how best to address it. With input from outside experts and the IT professionals it employs directly, Artech has agreed to continue, adopt and/or implement certain business practices and remedial measures (“Business Practice Commitments”) for a period of at least three years following the Effective Date of the Settlement. This includes the following:

- a. Artech has conducted baseline penetration testing through a well-established third-party IT security vendor, and will continue to conduct substantially-equivalent penetration testing at least annually. Defendant has conducted annual penetration testing as outlined in this subparagraph for 2021, and will reauthorize sufficient funds in its IT budget for 2022 and each subsequent year through 2024 to utilize the same or any comparably-priced improved testing technology as may be available.
- b. Artech shall continue to ensure that anti-malware software resides on all its servers, and that its VPN appliance is updated as soon as practicable after security updates become available, but in no instance less often than monthly.
- c. Artech is implementing a company-wide encryption protocol wherein all Personal Information is segregated by its employees and encrypted daily.
- d. Artech is testing its IT security for NIST compliance, and has achieved compliance with many NIST requirements, with the remainder to be addressed through SIEM software. Defendant will provide a declaration or certification of such compliance on or before December 21, 2022.
- e. Artech is currently evaluating several Security Information and Event

1 Management (“SIEM”) software options, and shall deploy SIEM software on
2 or before December 31, 2022.

3 f. Artech currently provides IT security and Personal Information training to all
4 of its personnel during onboarding, and on a quarterly basis thereafter, which
5 will continue. This training includes directions about how to handle suspicious
communications and documents and encourages personnel to report any
concerns about Artech’s information security systems.

6 g. Artech has developed and implemented a formal written Personal Information
7 policy, which it will continue to maintain with appropriate updates.

8 h. Artech is developing a suite of testing and auditing tools through a third-party
9 vendor designed to locate Personal Information located outside Artech’s
10 encrypted environment, which will be implemented on or before December
11 31, 2021. Artech shall provide to the Court a certification from its third-party
12 vendor that all Personal Information located during the auditing process has
13 been either destroyed or moved to Artech’s encrypted environment.

14 i. Artech shall continue to provide employees and former employees a means
15 requesting their Social Security numbers and dates of birth be deleted after
16 such information is no longer needed to fulfill Artech’s corporate mission, and
17 will delete such information upon request.

18 Settlement Agreement at ¶51.

19 Thus, the Settlement Agreement confirms and ensures Artech’s continued commitment to
20 protect the PII contained on its systems. It provides access to credit monitoring and identity
21 protection services to all Participating Class Members. In addition, it provides significant
22 monetary relief to any who lost time fairly traceable to the Cyber Security Event or had out-of-
23 pocket expenses caused by actual identity theft, fraud, or misuse of their PII fairly traceable to
24 the Cyber Security Event. There is no aggregate cap or possibility of reversion. In short, the
25 Parties respectfully submit that the Settlement Agreement is fair, reasonable, and adequate under
26 Fed. R. Civ. P. 23(e)(2), and should therefore be approved.

27 5. Release by the Class

28 Upon the Effective Date, and in consideration of the Settlement benefits described in the
Settlement Agreement and outlined above, each of the Settlement Class Representatives and

1 Participating Settlement Class Members, and each of their respective heirs, executors,
 2 administrators, representatives, agents, partners, successors, attorneys, and assigns shall be
 3 deemed to have released, acquitted, and forever discharged any and all Released Claims against
 4 Artech. *See* Settlement Agreement ¶68. The Released Claims, as defined in the Settlement
 5 Agreement, encompass the claims pled by Plaintiffs in their FAC and all other claims related to
 6 the same nucleus of operative facts underlying the FAC. *See* Settlement Agreement at ¶¶26, 69.

7 **IV. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED AS
 8 PART OF APPROVAL OF THE SETTLEMENT AGREEMENT**

9 Class certification requires the following: (1) the class must be so numerous that joinder
 10 of all members individually is “impracticable;” (2) there must be questions of law or fact common
 11 to the class; (3) the claims or defenses of the class representatives must be typical of the claims
 12 or defenses of the class; and (4) the person representing the class must be able to fairly and
 13 adequately protect the interests of all class members. FED. R. CIV. P. 23(a); *Espinosa v. Ahearn*
 14 (*In re Hyundai & Kia Fuel Econ. Litig.*), 926 F.3d 539, 556. In addition, common questions of
 15 law or fact must predominate over any questions affecting only individual class members, and the
 16 class action must be superior to other available methods for fairly and efficiently adjudicating the
 17 controversy. Fed. R. Civ. P. 23(b)(3).

18 **A. The Class is Sufficiently Numerous**

19 Federal Rule of Civil Procedure 23(a)(1) numerosity is satisfied where the number of
 20 proposed class members is so numerous that joinder of all members is impracticable. Numerosity
 21 is presumed where the plaintiff class contains forty or more members. *Consolidated Rail Corp.*
 22 *v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995). Here, there are 30,711 members of the
 23 Settlement Class, making joinder impractical, and satisfying the Rule 23 numerosity requirement.

24 **B. The Commonality Requirement Is Met**

25 Rule 23(a)(2) requires that the representative plaintiffs’ claims contain “questions of law
 26 or fact common to the class.” Fed. R. Civ. P. 23(a)(2). Generally, “a few factual variations among

1 the class grievances will not defeat commonality so long as class members' claims arise from
 2 "shared legal issues" or "a common core of salient facts." *Staton v. Boeing Co.*, 327 F.3d 938,
 3 953 (9th Cir. 2003).

4 Here, the claims of Plaintiffs and members of the Class all stem from the same Cyber
 5 Security Event. The common issues presented in this litigation include whether Artech failed to
 6 implement and maintain reasonable and adequate data security practices to safeguard the PII of
 7 Plaintiffs and the Class, the Cyber Security Event itself, whether Artech owed and breached any
 8 duty to Plaintiffs and the Class to keep their PII secure, and the types of damage caused by the
 9 Cyber Security Event. Any potential differences in damages are addressed through the Settlement
 10 Agreement's tiered compensation approach. Thus, common questions of law and fact
 11 predominate and this requirement is met.

C. The Typicality Requirement is Met

13 Rule 23(a)(3) requires that the representative plaintiffs' claims and defenses are typical of
 14 those of the proposed class. Fed. R. Civ. P. 23(a)(3). The representative plaintiffs' and proposed
 15 class members' injuries do not have to be identical, but it is required that "the unnamed class
 16 members have injuries similar to those of the named plaintiffs and that the injuries result from the
 17 same injurious course of conduct." *Armstrong v. Davis*, 275 F.3d 849, 869 (9th Cir. 2001). Here,
 18 the claims of Plaintiffs and those of the proposed Class arise from the same facts and
 19 circumstances surrounding the Cyber Security Event, and the same or similar legal theories, and
 20 thus, the typicality requirement is met. Again, variations in damages are addressed by the tiered
 21 compensation provided for in the Settlement Agreement.

D. The Adequacy Requirement is Met

23 Rule 23(a)(4) requires that the representative parties will fairly and adequately protect the
 24 interests of the class. Fed. R. Civ. P. 23(a)(4). The adequacy requirement rests on two questions:
 25 whether the class representatives and their counsel (1) have any conflicts of interest with the

1 proposed class members; and (2) will prosecute the action vigorously on behalf of the class. *See*
 2 *Staton*, 327 F.3d at 957.

3 The adequacy requirement is satisfied here. Neither the proposed Class Representatives
 4 (Plaintiffs) nor Class Counsel have any conflicts with the absent Class members, as their claims
 5 are coextensive. *See Federman* Dec. at ¶29, ECF No. 36-2. With regard to the second factor, the
 6 proposed Class Counsel is a highly qualified and experienced class action attorney, especially in
 7 the area of data breaches, consumer protection and complex litigation. *Id.* at ¶4. Finally, the
 8 proposed Class Representatives have been regularly involved in the litigation to-date, have
 9 provided information critical in negotiating the Settlement, have been in regular communication
 10 and will continue to be through the completion of the claims administration process. *Id.* at ¶24.

11 **E. The Settlement Class Satisfies the Predominance Test Under Rule 23(b)(3)**

12 In order to satisfy Federal Rule of Civil Procedure 23(a), at least one prong of Rule 23(b)
 13 must also be met. This is the predominance inquiry test which asks whether proposed classes are
 14 sufficiently cohesive to warrant adjudication by representation and whether there is clear
 15 justification for handling the dispute on a representative rather than an individual basis. *Hanlon*
 16 v. *Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998). Further, Rule 23(b) requires that a class
 17 action is superior to other available methods for fairly and efficiently adjudicating the
 18 controversy. Fed. R. Civ. P. 23(b)(3).

19 When analyzing predominance, the Court looks at the common issues underlying the
 20 plaintiffs' individual claims. Here, the legal issues faced by members of the Class arise from the
 21 same set of facts surrounding the Cyber Security Event and thus mirror claims alleged by
 22 Plaintiffs. The facts and issues that support the commonality requirement discussed above overlap
 23 here as well. The commonalities such as the issues of duty and breach are one and the same
 24 between Plaintiffs and members of the Class. Resolution of Plaintiffs' claims would result in
 25 resolution of the issues of the Class. While damages may vary between Plaintiffs and individuals
 26 of the Class, because their damages all stem from Artech's actions that created the legal liability,

1 and the Settlement Agreement provides a tiered compensation approach. Plaintiffs have met the
2 predominance test. *See e.g. Vaquero v. Ashley Furniture Indus., Inc.*, 824 F.3d 1150, 1154 (9th
3 Cir. 2016) (where the plaintiffs' damages stemming from defendant's actions creating legal
4 liability was sufficient evidence to meet predominance requirement).

Plaintiffs are also able to show that class settlement is superior to other methods of litigation. To determine whether a class action is a superior method for resolving the litigation four factors are considered: “(1) the class members' interest in individually controlling the prosecution or defense of separate actions, (2) the extent and nature of any litigation concerning the controversy already begun by or against class members, (3) the desirability or undesirability of concentrating the litigation and of the claims in the particular forum, and (4) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3)(A)–(D); *Wortman v. Air New Zealand*, 326 F.R.D. 549, 561 (N.D. Cal. 2018), citing *Zinser v. Accufix Research Institute, Inc.*, 253 F.3d 1180, 1190 (9th Cir. 2001).

The following facts support class action litigation here: (1) there are 30,711 individuals in the Settlement Class, all of whose PII was accessible during the Cyber Security Event, (2) Settlement Class members and Plaintiffs have similar, if not the same, legal claims stemming from the Cyber Security Event, (3) the Parties are unaware of litigation related to this case going on in any other forum, and (4) this particular forum is appropriate and convenient for Plaintiffs' claims to be litigated. Additionally, individual litigation of each Class Member's claims would be less efficient, not cost effective, and there are no other realistic alternatives. *See Loc. Joint Exec. Bd. of Culinary/Bartender Tr. Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001). Since settlement-only certification is requested, Rule 23(b)(3)(D) does not require an analysis of manageability. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Finally, Artech has reserved its right to contest all claims made by Plaintiffs should the Settlement Agreement not be approved. In such a circumstance, Artech believes it has numerous strong defenses that would significantly limit the benefits available to the members of the class and lead

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1 to piecemeal litigation of claims with nominal, if any, value. *See* Declaration of Jesse A. Boyd,
2 attached hereto as Exhibit C, at ¶¶5-7.

3 In the context of the proposed Settlement, the requirements of Rule 23 have been met.
4 The Parties therefore request the proposed class be certified as part of the Final Approval process.⁴

5 **V. THE SETTLEMENT AGREEMENT SHOULD BE APPROVED**

6 In evaluating a proposed class action settlement under Federal Rule of Civil Procedure
7 23(e), the standard is whether the settlement “is fundamentally fair, adequate and reasonable.”
8 *E.g. In re Heritage Bond Litig.*, 546 F.3d 667, 674–75 (9th Cir. 2008); *Torrissi v. Tucson Elec.*
9 *Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993).

10 A district court should generally consider the following factors when making this
11 determination:

12 (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely
13 duration of further litigation; (3) the risk of maintaining class action status
14 throughout the trial; (4) the amount offered in settlement; (5) the extent of
15 discovery completed and the stage of the proceedings; (6) the experience and
views of counsel; (7) the presence of a governmental participant; and (8) the
reaction of the class members of the proposed settlement.

16 *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011), quoting *Churchill*
17 *Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004). When, as here, a proposed settlement
18 is negotiated prior to formal class certification, courts must also scrutinize the agreement for
19 “evidence of collusion or other conflicts of interest.” *Id.* The Court preliminary finding that the
20 Settlement is fair, adequate, and reasonable in light of these factors remains true for the purposes
21 of final approval. *See* Preliminary Approval Order, ECF 43 at pp. 9-10.

22 ///

23
24
25
26 ⁴ Artech notes that in reserving all arguments and defenses those related to class certification
will remain should the Settlement Agreement not be approved.

1 **A. Strength of Plaintiffs' Case**

2 The Settlement reflects the strength of Plaintiffs' case as well as Defendant's position.
 3 Courts have noted that legal uncertainty supports approval of a settlement. *See e.g. Browning v.*
 4 *Yahoo! Inc.*, No. 04-CV-01463-HRL, 2007 WL 4105971, at *10 (N.D. Cal. Nov. 16, 2007)
 5 ("[L]egal uncertainties at the time of settlement—particularly those which go to fundamental legal
 6 issues—favor approval."). Data-breach litigation is in its infancy with threshold issues still
 7 playing out in the courts. In the past few years, both the Seventh and Ninth Circuits issued
 8 opinions addressing basic issues of standing in data-breach cases. *See In re Zappos.com, Inc.*, 888
 9 F.3d 1020 (9th Cir. 2018); *Dieffenbach v. Barnes & Noble, Inc.*, 887 F.3d 826 (7th Cir. 2018).
 10 Similarly here, Plaintiffs raise novel issues on topics such as damages. Plaintiffs' theories have
 11 not been tested beyond the pleading stage. Plaintiffs would also face strong opposition from
 12 Defendant. For example, a finding that Artech's security measures are inadequate is not a forgone
 13 conclusion, as Artech's existing security protocols and response to the breach may be found to
 14 have been up to industry standards. In addition, Artech has reserved all defenses and arguments
 15 and is prepared to vigorously defend the action should the Settlement Agreement not be approved.
 16 Boyd Dec. at ¶¶6-7. Thus, this factor weighs in favor of approval.

17 **B. Risk, Expense, Complexity, and Likely Duration of Further Litigation**

18 The risks, expense, complexity, and likely duration of further litigation also support the
 19 Court's final approval of the Settlement. Any trial outcome would be subject to potential appeals,
 20 which at a minimum would have substantially delayed any recovery achieved for the class. *See*
 21 Federman Dec. at ¶28, ECF No. 36-2. The negative effects of delay are especially acute in this
 22 context because according to industry experts', the need for credit monitoring is most important
 23 for the five years following a data breach. Correspondingly, in order to effectively fortify the
 24 system against future breaches, it is imperative that Artech implement the security measures
 25 sooner rather than later. Taken together, these circumstances suggest that litigation would be

1 costly and uncertain and will detrimentally delay any potential relief for the Class. By contrast,
 2 the Settlement provides the Class with timely, certain, and meaningful benefits.

3 **C. Risk of Maintaining Class-Action Status Throughout Trial**

4 There is a potential risk that Plaintiffs would not be able to maintain class-action status
 5 throughout trial. At the time of Settlement, the Court had not yet ruled on class certification.
 6 While there is no obvious reason to treat certification in a data-breach case differently than
 7 certification in other types of cases, the dearth of precedent makes continued litigation more risky.
 8 Due to the unsettled nature of the legal questions, Plaintiffs would likely have to contend with
 9 changing interpretations of procedural and substantive provisions throughout the course of the
 10 case. Additionally, trying the case may present certain manageability problems with regard to
 11 the calculation of individual damages under some of the proposed damages theories. *See Six (6)*
 12 *Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1304 (9th Cir. 1990). Although those
 13 concerns are not class-defeating in the settlement context, *Amchem*, 521 U.S. at 620, they would
 14 need to be considered if the case were to proceed to trial. These potential difficulties with
 15 maintaining class certification in this case counsel in favor of approving the settlement.

16 **D. Amount Offered in Settlement**

17 The Settlement provides meaningful benefits and compensation to Participating
 18 Settlement Class Members. All are eligible for credit monitoring and identity protection services,
 19 and there is tiered compensation available for up to three (3) hours of lost time and up to \$10,000
 20 in reimbursement of out-of-pocket expenses upon proper showing. Importantly, there is no
 21 aggregate limit to the settlement fund. Finally, expert analysis shared between the Parties shows
 22 that there is minimal risk of financial harm as a result of the Cyber Security Event. In short, the
 23 amount offered in the settlement weighs heavily in favor of approval.

24 **E. Discovery and Investigation Completed Before Settlement**

25 The Plaintiffs investigated their claims both prior to and after retaining counsel;
 26 participated in numerous conversations with counsel, answering many questions about

1 themselves, their experiences at Artech and as a result of the Cyber Security Event; reviewed the
 2 multiple complaints; provided documents responsive to informal discovery prior to mediation;
 3 and maintained regular communications with counsel to monitor the progress of the litigation
 4 including during the mediation. Federman Dec. at ¶24, ECF No. 36-2. The named Plaintiffs have
 5 been diligent, pro-active Class Representatives.

6 The Parties engaged in rigorous and substantive informal discovery prior to mediation.
 7 This included Artech's sharing the results of its experts' forensic analysis of the Cyber Security
 8 Event. *See id.* at ¶¶15, 16. Artech's and Plaintiffs' experts then reviewed the available forensic
 9 data directly with each other. Thus, the discovery and good-faith settlement discussions that took
 10 place between the Parties provided Class Counsel with an understanding of the strengths and
 11 weaknesses of Plaintiffs' case prior to the Parties' mediation with Judge Infante, which ultimately
 12 led to the Settlement Agreement now before the Court. *See id.* at ¶¶6, 24, 43. Thus, the discovery
 13 process prior to reaching Settlement supports its approval. *See e.g. Moshogiannis v. Sec.*
 14 *Consultants Grp., Inc.*, No. 5:10-cv-05971 EJD, 2012 WL 423860 at *5 (N.D. Cal. Feb. 8, 2012)
 15 (holding that settlement was fair, reasonable, and adequate where, *inter alia*, "the parties
 16 conducted a significant amount of informal discovery...").

17 F. **Experience and Views of Counsel**

18 The views of Class Counsel weigh in favor of final approval. The Court appointed
 19 competent and experienced counsel who have done extensive work in all types of complex class
 20 actions. Federman Dec. at ¶4, ECF No. 36-2. Class Counsel are thus able to make educated
 21 assessments about the risks and possible recoveries in the current dispute. Plaintiffs' counsel
 22 endorses the Settlement as fair, adequate, and reasonable.

23 For their part, Artech's counsel have significant experience in defending like or similar
 24 claims to those asserted by Plaintiffs, including in the context of class actions. Boyd Dec. at
 25 ¶¶3-4. While they are confident in their ability to successfully defend the case should it not be
 26 approved, Artech's counsel believe the Settlement Agreement represents an outcome that works

1 to the benefit of Plaintiffs, the Settlement Class Members, and Artech alike. *Id.* at ¶8. Thus,
 2 they also endorse the Settlement as fair, adequate, and reasonable.

3 **G. The Presence of a Government Participant**

4 To date, there is no government participant in this case. The Settlement Administrator has
 5 provided governmental officials the requisite notice of the proposed settlement pursuant to the
 6 Class Action Fairness Act, 28 U.S.C. § 1715. *See* Thomas Dec. at ¶¶2, 3. As of filing, none has
 7 come forward with objections or complaints.

8 **H. Reaction of Class Members to the Proposed Settlement**

9 **1. Notice and Claims**

10 On September 30, 2021, the Court granted preliminary approval of the Settlement. ECF
 11 No. 43. The Court issued an Order Amending Procedures for Final Approval on October 29,
 12 2021. ECF No. 47. Pursuant to those orders, on November 24, 2021, KCC mailed the Court-
 13 approved notice to all 30,711 class members. *See* KCC Weekly Claims Report, January 5, 2022,
 14 attached as Exhibit C to Thomas Dec. KCC also emailed the notice to 26,086 class members for
 15 whom email addresses were available. *Id.* To date, a total of 166 notices have been returned to
 16 KCC as undeliverable. *Id.* Thus, approximately 99.4% of notices have been delivered without
 17 being returned, which is excellent evidence of the quality of contact information contained in the
 18 Settlement Class List provided by Artech to KCC.

19 As of January 5, 2022, 636 claims have been submitted by Settlement Class Members,
 20 representing a claim rate of 2.07%. While there are class-action settlements that have realized
 21 higher claim rates, others have been approved with far lower rates. *See e.g.* *In re The Home*
Depot, Inc., Customer Data Sec. Breach Litig., No. 1:14-MD-02583-TWT, 2016 U.S. Dist.
 22 LEXIS 200113, 2016 WL 6902351, at *2 (N.D. Ga. Aug. 23, 2016); *In re Target Corp. Customer*
Data Sec. Breach Litig., No. 14-MD-02522-PAM, 2017 U.S. Dist. LEXIS 75455, 2017 WL
 23 2178306, at *9 (D. Minn. May 17, 2017). More importantly, Settlement Class Members have
 24 until February 26, 2022 to file a claim, and additional claims are expected to be received before
 25

1 then. Should the Court grant final approval, KCC's assessment of claims will proceed according
 2 to the Settlement Agreement and in consultation with Class Counsel and counsel for Artech to
 3 ensure Participating Settlement Class members receive the settlement benefits to which they are
 4 entitled under the Settlement Agreement.

5 **2. Opt-outs and Objections**

6 Low rates of objections and opt-outs are "indicia of the approval of the class." *Hughes v.*
 7 *Microsoft Corp.*, No. 98-CV-01646, 2001 WL 34089697, at *1, *8 (W.D. Wash. Mar. 26, 2001)
 8 (finding indicia of approval where nine out of 37,155 class members—or just over 0.02%—
 9 submitted objections and "less than 1%" opted out); *see also Churchill Vill., L.L.C. v. GE*, 361
 10 F.3d 566, 577 (affirming district court's approval of settlement where 45 of 90,000 class
 11 members—or 0.05%—objected to the settlement and 500 class members—or 0.56%—opted out);
 12 *Sugarman v. Ducati N. Am., Inc.*, No. 10-CV-05246-JF, 2012 WL 113361, at *3 (N.D. Cal. Jan.
 13 12, 2012) (noting that objections from 42 of 38,774 class members—more than 0.1 percent—is a
 14 "positive response"). "The absence of a large number of objections to a class settlement raises a
 15 strong presumption that the terms of a propose class settlement action are favorable to the class
 16 members." *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1013 (E.D. Cal. May 8, 2019). As
 17 such, "[a] court may properly infer that a class action settlement is fair, adequate, and reasonable
 18 when few class members object to it." *Knapp v. Art*, 283 F. Supp. 3d 823, 833-834 (N.D. Cal.
 19 2017).

20 When considering class members' objections, the district court evaluates whether they
 21 identify reasons why the proposed settlement may be unfair. *See Bennett v. Behring Corp.*, 737
 22 F.2d 982, 988 (11th Cir. 1984) (affirming approval of a class settlement despite significant
 23 objections from class members because "the reasons for that opposition [were] thoroughly
 24 considered and ultimately rejected by the district court"); *Californians for Disability Rights, Inc.*
 25 v. *Cal. DOT*, No. C 06-5125 SBA, 2010 U.S. Dist. LEXIS 62837, 2010 WL 2228531, *2 (N.D.
 26 Cal. June 2, 2010) ("If objections are filed, the district court is to evaluate whether they suggest

1 serious reasons why the settlement proposal might be unfair"); *Boyle v. Arnold-Williams*, No.
 2 C01-5687JKA, 2006 U.S. DIST. LEXIS 91920, *10-11 (W.D. Wash. Dec. 20, 2006) ("T]he fact
 3 that there is opposition does not necessitate disapproval of the settlement. Instead, the court must
 4 independently evaluate whether the objections being raised suggest serious reasons why the
 5 proposal might be unfair").

6 As of the filing of this Motion, out of the 30,711 putative Settlement Class Members, none
 7 have opted out. Meanwhile, only one class member has filed an objection.

8 On December 28, 2021, Mr. Eric L. Howard filed a *pro se* objection directly with the
 9 Court. *See Objection to Settlement and Fee Application of Class Counsel* ("Howard Objection"),
 10 ECF No. 52. Mr. Howard's objection is slightly more than one page and does not meet the
 11 requirements of Rule 23(e)(5)(A), which states, "The objection must state whether it applies only
 12 to the objector, to a specific subset of the class, or to the entire class, and also state with specificity
 13 the grounds for the objection." FED. R. CIV. P., Rule 23(e)(5)(A). More importantly, it does not
 14 provide "serious reasons why the settlement proposal might be unfair." *Californians for*
 15 *Disability Rights, Inc.*, 2010 U.S. Dist. LEXIS 62837, 2010 WL 2228531, at *2.

16 Mr. Howard fails to state if his objection applies to himself alone or some portion of the
 17 Class. But even if the application of his objection can be inferred, the only statement he makes
 18 in support of his objection is, "Upon Artech's forensic investigation on January 15, 2020; it was
 19 determined an unauthorized actor accessed Artech's secured database between January 5, 2020
 20 and January 8, 2020; and obtained class members' personal information including names and
 21 social security numbers." Howard Objection at ¶ 2.⁵ From this he asserts that the "current
 22 proposal is not fair, reasonable, and/or adequate to redress the known or unknown harm the actual
 23 or attempted misuse of the class members' personal information..." He does not present any
 24

25 _____
 26 ⁵ As outlined in the Class Notice, the Parties are not aware of any evidence Settlement Class Members' PII was
 "obtained" during the Cyber Security Event, see ECF No. 36-3, and Mr. Howard does not supply any information
 to support his assertion that this occurred.

1 evidence or statement showing “known” harm or “actual or attempted” misuse. In essence, Mr.
 2 Howard is asserting that there may be “unknown harm” stemming from the Cyber Security Event,
 3 and the Settlement is therefore not “fair, reasonable, and/or adequate.”

4 Such speculation does not provide “serious reasons why the settlement proposal might be
 5 unfair.” Mr. Howard’s objection asserts the “current proposal” is not fair, reasonable, and/or
 6 adequate to redress an unidentified “known or unknown” harm, but fails to state why. It further
 7 fails to state whether the objector has experienced any harm from the Cyber Security Event,
 8 whether the terms of the Settlement provided him adequate relief, or whether he has submitted a
 9 claim.

10 Regardless, the Settlement Agreement provides Mr. Howard and the other Settlement
 11 Class Members adequate remedy for the speculative “harm” to which Mr. Howard appears to be
 12 alluding. The Settlement offers credit monitoring and identity protection services to all
 13 Participating Settlement Class Members thereby minimizing the risks associated with misuse of
 14 PII. If Mr. Howard does not believe this protection to be sufficient, he has been, and as of filing
 15 continues to be, free to opt out of the Settlement. His single objection should not preclude the
 16 other Settlement Class Members from receiving the protection and benefits provided for in the
 17 Settlement.

18 VI. OTHER MATTERS RELEVANT TO APPROVAL DETERMINATION

19 A. Proposed Class Representative Service Awards

20 The Parties agreed upon the amount of a reasonable service award to be paid to the named
 21 Plaintiffs after they reached an agreement on the terms of the settlement. Federman Dec., ¶23,
 22 ECF No. 36-2. Artech does not oppose service awards of \$2,500.00 to the two named Plaintiffs.
 23 *Id.* The service awards sought by Class Counsel are within the typical range. “Incentive awards
 24 typically range from \$2,000 to \$10,000.” *Bellinghausen v. Tractor Supply Co.*, 306 F.R.D. 245,
 25 267 (N.D. Cal. 2015) (collecting cases). Courts in the Northern District of California have found
 26 that a \$5,000 incentive award is presumptively reasonable. *See, In re LinkedIn User Privacy Litig.*,

1 309 F.R.D. 573, 592 (N.D. Cal. 2015); *Rosado v. Eay Inc.*, No. 5:12-cv-04005-EJD, 2016 WL
2 3401987, at *9 (N.D. Cal. June 21, 2016). In addition, because the Settlement is not conditioned
3 on the Court’s approval of the full (or any) amount of a service award, the Settlement does not
4 grant preferential treatment to Plaintiffs. Guidance, Item 7.

5 The Plaintiffs have been active Class Representatives. They investigated their claims both
6 prior to and after retaining counsel; participated in numerous conversations with counsel,
7 answering many questions about themselves, their experiences at Artech and as a result of the
8 Cyber Security Event; reviewed the multiple complaints; provided documents responsive to
9 informal discovery prior to mediation; and maintained regular communications with counsel to
10 monitor the progress of the litigation including during the mediation. Federman Dec. at ¶24, ECF
11 No 36-2. They also conferred with counsel regarding the terms of the Settlement Agreement. *Id.*
12 The proposed \$2,500.00 service award is consistent with or below those approved in other data
13 breach class action settlements. *Id.* at ¶23.

B. Class Counsel's Attorneys' Fees, Costs, Expenses

15 The issue of Class Counsel's Attorneys' fees, costs and expenses is before the Court under
16 separate motion (ECF No. 48), which motion and its supporting papers are incorporated herein
17 by reference.

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**NOTICE OF JOINT MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

1 **VII. CONCLUSION**

2 For the reasons outlined above, the proposed Settlement is fair, reasonable, and
3 adequate. The Parties therefore respectfully request that the Court grant final approval.

4

5 DATED: January 6, 2022

ERICKSEN ARBUTHNOT

6 By: /s/ Jesse A. Boyd
7 Jesse A. Boyd
8 jboyd@ericksenarbuthnot.com

9 By: /s/ Linda N. Hwee
10 Linda N. Hwee
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12

13 DATED: January 6, 2022

14 *Attorneys for Defendant Artech L.L.C.*

FEDERMAN & SHERWOOD

15 By: /s/ William B. Federman
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15 *Counsel for Plaintiffs and*
16 *Conditional Class Counsel.*

XX CM/ECF ELECTRONIC FILING. I caused the above document(s) to be transmitted to the office(s) of the addressee(s) listed above by electronic mail at the e-mail address(es) set forth above in accordance with the rules governing the electronic filing of documents in the United States District Court for the Northern District of California. A Notice of Electronic Filing (NEF) is generated automatically by the ECF system upon completion of the electronic filing. The NEF, when e-mailed to the e-mail address of record in the case, shall constitute the proof of service as required by Fed.R.Civ.P.5(d)(1).

I certify under penalty of perjury that the foregoing is true and correct.

Executed at Orinda, California on January 6, 2021.

By: /s/ Jesse A. Boyd